



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13051192
[REDACTED]

ICRC No.: EMrt13061233
[REDACTED]

[REDACTED]
Complainant,

v.

FORGE INDUSTRIAL STAFFING,
Respondent.

NOTICE OF FINDING¹

The Deputy Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On May 23, 2013 and June 10, 2013, [REDACTED] ("Complainant") filed Complaints with the Commission against Forge Industrial Staffing ("Respondent") alleging discrimination on the basis of race and perceived disability and retaliation in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) [REDACTED]

[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The first issue presented to the Commission is whether Complainant was subjected to different terms and conditions of employment because of his race and/or disability. In order to prevail,

¹ This Notice of Finding addresses both claims of discrimination filed by the Complainant as they arise out of the same set of facts. ICRC No. EMha13051192 (EEOC No. 24F-2013-00476) refers to the different terms and conditions claim while ICRC No. EMrt13061233 (EEOC No. 24F-2013-00522) refers to the retaliation claim.



Complainant must show that: (1) he is a member of a protected class; (2) he was subjected to adverse treatment; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees of another race or without impairment were treated more favorably under similar circumstances.

The second issue presented to the Commission is whether Respondent retaliated against Complainant because he filed a Complaint with the Commission. In order to prevail, Complainant must show: (1) that he filed a Complaint with the Commission or assisted with an investigation; (2) Respondent was aware of the Complaint; (3) he suffered an adverse employment action; (4) he was meeting employer's expectations; and (5) there is a causal connection between Complainant's act of filing the Complaint and the adverse employment action.

By way of background, Respondent is a staffing agency that employs temporary workers and places them with various clients. On or about April 23, 2013, Respondent hired Complainant as a temporary worker and placed him with Arrow Container on April 24, 2013. On April 24, 2013, Complainant sustained a work related injury when he was hit by a forklift, spraining his ankle and injuring his back. At all times relevant to the Complaint, Respondent had a return to work policy that offered transitional work assignments within the employee's capacity to those injured at the workplace. According to the policy, transitional employment is defined as "the temporary period of time when the employee first comes back to work with restrictions or job modifications, until the time when they are fully functional in their job." Complainant provided medical documentation to Respondent indicating that he was prohibited from prolonged walking or standing while working; as such, Complainant was assigned to a light duty temporary transitional assignment at Respondent's office on or about April 29, 2013. Both parties, including Respondent's Manager of Operations and Senior Service Coordinator, admit that during the course of Complainant's light duty/ clerical assignment, Complainant was required to handle sensitive and confidential information. Specifically, Complainant was responsible for preparing files for new temporary employee orientation, organizing temporary employee files, purging the files of old temporary employees, and handling documentation that contained employee names, addresses, social security numbers, and other sensitive materials. Upon assignment to the position, Complainant was assigned to work in a small "conference room" located towards the front of the office. The room contained little more than a table and chair and was isolated from the remainder of office staff. While other office staff were permitted to access the bathroom and kitchen facilities located in the back office area, Respondent prohibited Complainant, the only African-American in the office, from doing so due to the fact that sensitive and confidential materials were housed in that area. Specifically, upon asking his supervisor, the Manager of Operations, to use the microwave in the back area, Complainant was advised that he would either need to be supervised using the microwave or another individual could heat his food and return it to him. The evidence shows that there were no other microwaves or kitchen areas in the facility available for Complainant's use. Moreover, Complainant was only permitted to use the restrooms located in the front office area; evidence shows that both visitors and potential clients had access to these facilities. Further, evidence indicates that Respondent made an example out of Complainant during an employee orientation when it opened the door to Complainant's "office," and

announced to the participants that Complainant had been injured on the job and assigned a light duty office assignment.

Although evidence indicates that Complainant complained about the conditions of his employment to the Manager of Operations as instructed in Respondent's policies and procedures, and alleged that he felt as though he was being treated in a discriminatory manner, Respondent admits that it did not investigate the allegations. Despite Respondent's policy stating that employees were to remain in the transitional role until they were "fully functional in their job," and Complainant's Physician Work Activity Status Report indicating that Complainant had follow up visits scheduled for June 3, 2013 and June 7 with the anticipated date of maximum medical improvement projected at May 31, 2013, Respondent terminated Complainant's light duty assignment on or about May 29, 2013, three days after Complainant filed his Complaint with the Commission.

It is clear that Complainant was subjected to different terms and conditions by virtue of his race and perceived disability. There is no question that Complainant is a member of a protected class by virtue of his race and perceived disability. Moreover, he suffered adverse treatment when he was prohibited from using Respondent's kitchen facilities without permission or the back office restroom. While his placement in an exceptionally small "conference room" is questionable at best, there is no question that similarly-situated Caucasian employees or those without perceived impairment were permitted to use the kitchen facilities as well as the restrooms located in the front and back office areas without issue. Further, Respondent admits that Complainant was the only employee restricted from using the employee restroom in the back office and the kitchen facilities. Although Respondent alleges Complainant was not meeting its legitimate business expectations, this assertion appears to be pretext for discrimination as well. Respondent failed to provide evidence substantiating that it placed Complainant in the conference room and denied access to the amenities in the back office area because he failed to meet business expectations. Rather, there is no evidence that Respondent had an opportunity to assess Complainant's performance in the light duty capacity before preventing him from accessing the back office area. Further, Respondent admits that there were no other employees, either without perceived impairment or of another race, that were treated similarly to Complainant; rather, the evidence is clear that those without perceived impairment or of another race were treated more favorably under similar circumstances. Moreover, Respondent's claims that Complainant could not access the back office because sensitive confidential documents were housed in that location appear to be pretextual as Respondent admits that Complainant worked on the same type of confidential and sensitive documents in his light duty position. Additionally, Respondent has failed to provide any evidence that Complainant would have access to sensitive materials simply by having access to the restroom or kitchen facilities located in the back office area. Thus, Respondent's rationale for Complainant's treatment appears to be pretext for unlawful discrimination on the basis of race and perceived disability and there is probable cause to believe that Complainant was subjected to less favorable treatment on the basis of race and/or perceived disability and that Respondent engaged in discriminatory treatment as alleged.

Similarly, with respect to the second issue, there is probable cause to believe that an unlawful discriminatory practice occurred in this instance. There is no question that Complainant filed his initial Complaint with the Commission on or about May 23, 2013 (EMha13051192). Further, Respondent was aware of and responded to the Complaint. Moreover, it is evident that Complainant faced an adverse employment action when his light duty assignment was terminated on May 29, 2013 although he was meeting Respondent's legitimate business expectations. While Respondent asserts that it terminated Complainant's light duty assignment after it received complaints from other employees about his behavior, Respondent admits that it never conducted an investigation into the allegations, never disciplined Complainant for these actions, and offered him additional "assignments for which he was qualified" in July 2013, after the initial termination.² It is clear that a nexus exists between the filing of the initial Complaint. As such, and based upon the aforementioned, there is probable cause to believe that Respondent engaged in unlawful retaliation against Complaint.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

March 27, 2014
Date

Akia A. Haynes
Akia A. Haynes, Esq.,
Deputy Director
Indiana Civil Rights Commission

² Although Respondent offered Complainant an assignment as late as July 2013, it was after Complainant filed both complaints of discrimination. There is no evidence that Respondent offered Complainant another position prior to the filing of the retaliation Complaint.